



FILED

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Kevin L. Smith

CLERK
of the supreme court,
court of appeals and
tax court

KEITH ALLEN MATTHEW
Tell City, Indiana

KEITH ALLEN MATTHEW,)
)
Appellant-Petitioner,)
)
vs.) No. 14A01-0712-CV-573
)
PATRICIA JEAN MATTHEW,)
ROBERT L. ARTHUR,)
)
Appellees-Respondents.)

May 8, 2008

BARNES, Judge

Case Summary

Keith Matthew appeals the trial court's denial of his motion for relief from judgment. We affirm.

Issue

Matthew raises multiple issues on appeal, which we consolidate and restate as whether he was entitled to relief from judgment because the dissolution decree was void for lack of subject matter jurisdiction.

Facts

The trial court dissolved the marriage of Keith and Patricia Matthew on January 19, 1995. Keith is currently serving a ninety-year sentence for the attempted murder of Patricia and her ex-husband. See Matthew v. State, No. 19A0-1-9601-CR-18 (Ind. Ct. App. Jan. 30, 1997), trans. denied. Over eight years later, on April 23, 2003, Matthew filed a pro se motion to dismiss a void judgment in an attempt to void the dissolution decree. The trial court dismissed it as an untimely Indiana Trial Rule 60(B) motion. Matthew filed a motion to correct error, which was denied. Matthew appealed and this court affirmed. See Matthew v. Matthew, No. 14A04-0307-CV-356 (Ind. Ct. App. Feb. 20, 2004).

The failure of his appeal did not dissuade Matthew. He filed a motion for change of judge and another motion to dismiss a void judgment in October of 2004. The trial court denied those motions and Matthew again appealed to this court. He did not file a timely brief, and we denied his motion for extension of time and motion to file a belated appeal on April 6, 2005. On March 30, 2007, Matthew tried once again at the trial court

level. He filed a verified motion for the appointment of a special judge and another motion to dismiss a void judgment. A special judge was appointed and the motion to void the judgment was denied by that judge. Matthew filed a motion to reconsider, which was denied. This appeal followed.

Analysis

Matthew's motion to dismiss a void judgment appears to be an attempt under Indiana Trial Rule 60(B) to obtain relief from judgment.¹ Matthew asserts that the thirteen-year-old judgment dissolving his marriage is void because he alleges that Patricia did not reside in the appropriate county for six months.² He is untimely in this request. Trial Rule 60(B) requires most motions to be filed "within a reasonable time" and certain motions to be filed within a year. Ind. Trial Rule 60(B). It had been twelve years between the trial court's issuance of Matthew's dissolution decree and this most recent request. Any requests to void the judgment at this stage are clearly untimely. Also, as pointed out in our 2004 opinion, any question of Patricia's residency is a question of venue, not jurisdiction, and would not result in a void judgment. See Matthew v.

¹ Matthew also attempts to argue that the trial court was obligated to hold a hearing and issue an order for his transport. This argument is not sufficiently developed by cogent reasoning and is waived on appeal. See Ind. Appellate Rule 46(A)(8)(a).

² Patricia did not file an appellee's brief. We do not need to develop an argument for her, and we apply a less stringent standard of review in this situation. Fowler v. Perry, 830 N.E.2d 97, 102 (Ind. Ct. App. 2005). We may reverse the trial court if the appellant is able to establish prima facie error, which is error at first sight, on first appearance, or on the face of it. Id. We warn Matthew that we will strongly consider awarding Patricia attorney fees for any of his future filings in this matter should she have to defend another frivolous or vexatious appeal. See App. R. 66(E).

Matthew, No. 14A04-0307-CV-356, slip op. at 4, n.2 (Ind. Ct. App. Feb. 20, 2004) (citing Mischler v. County of Elkhart, 544 N.E.2d 149, 152 (Ind. 1989)).

The issues raised in this most recent appeal are nearly identical to the issues before this court in 2004. Res judicata prevents the repetitious litigation of the same disputes. Indianapolis Downs, LLC v. Herr, 834 N.E.2d 699, 703 (Ind. Ct. App. 2005), trans. denied. The following four requirements must be satisfied for res judicata to preclude a claim: (1) the former judgment must have been rendered by a court of competent jurisdiction; (2) the former judgment must have been rendered on the merits; (3) the matter now in issue was, or could have been, determined in the prior action; and (4) the controversy adjudicated in the former action must have been between the parties to the present suit or their privies. Id.

Matthew fails to present any cogent argument that res judicata should not apply to prevent re-litigation of the merits of the trial court's original ruling. The issue of the legitimacy of the dissolution decree has been litigated before the trial court, and the trial court's decisions have previously been affirmed on appeal. We conclude that the reconsideration of these issues on appeal is barred by principles of res judicata.³

³ We are cognizant of and bound by our supreme court's recent string of decisions in Smith v. Indiana Department of Correction, No. 49S02-0804-CV-166 (Ind. April 9, 2008) and Higgason v. Indiana Department of Correction, No. 46S04-0804-CV-167 (Ind. April 9, 2008), the so-called "frequent filers" cases. While we, too, recognize the rights of our citizens to access the courts, this appellant registers a high mark on the "vexatious meter," and makes us yearn for some gatekeeping function which strikes the appropriate constitutional balance vis à vis this potential frequent filer. We encourage the trial court to use the Frivolous Claim Law to consider instant dismissal of future actions. See Ind. Code § 34-58-1-2.

Conclusion

Matthew's motion for relief from the 1995 judgment is barred by res judicata and untimely. We affirm.

Affirmed.

CRONE, J., and BRADFORD, J., concur.